ORIGINAL

90-8370

SUPREME COURT OF THE UNITED STATES

No. ~~89-5474~~

ORIGINAL
Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

TEOFILO MEDINA, JR.,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

On Petition for
Writ of Certiorari

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a state criminal prosecution, does the Due Process Clause of the Fourteenth Amendment mandate that the state prove facts beyond those encompassing elements of the crime charged, and assume the burden of proof for demonstrating a defendants competency to stand trial?

2. Does a state's admission of evidence of previously unadjudicated criminal activity involving a capital defendant during the penalty phase violate a defendant's Eighth and Fourteenth Amendment rights?

PARTIES

Petitioner, Teofilo Medina, Jr., is a California state prisoner incarcerated under judgment of death at the California State Prison at San Quentin, California. Respondent is the People of the State of California.

OPINION BELOW

Petitioner, Teofilo Medina, Jr., seeks review of an opinion of the California Supreme Court which affirmed petitioner's judgment of death in an opinion published as People v. Medina, 51 Cal.3d 870, 274 Cal. Rptr. 849, 799 P.2d 1282 (1990). The opinion is set forth in Petitioner's Appendix at pages A3 through A56.

JURISDICTION

The opinion affirming petitioner's judgment of death is a final decision of California'a highest court. This Court has jurisdiction to review the decision of the California Supreme

Court for federal constitutional error through writ of certiorari pursuant to section 1257, subsection (3) of Title 28 of the United States Code.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This matter involves the Eighth and Fourteenth Amendments to the United States Constitution, and California Penal Code sections 1369, subdivision (f) and 190.3, subdivision (b). These provisions are set forth in full at pages A1 through A2 of the Appendix.

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STATEMENT OF THE CASE

State Trial Court Proceedings

The murders for which petitioner was convicted and sentenced to death were committed during a crime spree in October and November of 1984, in Orange County, California. On July 9, 1986, the District Attorney of Orange County filed an amended information in Superior Court case number C-56201 charging petitioner with three counts of murder (Cal. Pen. Code § 187), three counts of robbery (Cal. Pen. Code § 211), one count of attempted robbery (Cal. Pen. Code §§ 211/664), two counts of assault with a deadly weapon (Cal. Pen. Code § 245, subd. (a)(2).), one count of false imprisonment (Cal. Pen. Code § 236.1), five counts of burglary (Cal. Pen. Code § 459), one count of grand theft (Cal. Pen. Code § 487.3), and eight counts of ex-felon in possession of a firearm (Cal. Pen. Code § 12021). It was further alleged the murders were committed during the commission of crimes of robbery and burglary (Cal. Pen. Code § 190.2 subds. (a)(17)(i) and (vii), more than one intentional murder was committed (Cal. Pen. Code § 190.2(a)(3), petitioner personally used a firearm during the murders, robberies, attempted robberies, burglaries, and false imprisonment (Cal. Pen. Code § 12022.5) and petitioner had previously been convicted of serious felonies. (Cal. Pen. Code §§ 667, 667.5.) (CT 352-359.)

On October 17, 1986, a jury found petitioner guilty as charged and found the three murders were premeditated and

deliberate first degree murders and the felony murder and multiple-murder special-circumstances and firearm use allegations were found true. (CT 942-967.) On November 20, 1986, the jury found petitioner sane at the time the offenses were committed. (CT 942-967.) A jury verdict imposing the death penalty was rendered on December 3, 1986. (CT 1127-1129.) Petitioner's motion for a new trial and modification of verdict was presented, argued, and denied. (CT 1335.) On December 3, 1986, petitioner was sentenced to death. (CT 1344.)

Proceedings in the Supreme Court of California

Petitioner's direct appeal to the Supreme Court of California was automatic in accordance with Article 6, section 11 of the California Constitution and California Penal Code section 1239, subdivision (b). The decision of the California Supreme Court affirming petitioner's conviction and judgment of death was filed on November 19, 1990. (People v. Medina, 51 Cal.3d 870; Appendix pp. A3 through A57.)

On March 15, 1991, the Superior Court of Orange County filed a warrant of execution ordering petitioner be put to death at San Quentin Prison on June 11, 1991. Thereafter, the California Supreme Court granted petitioner's petition for a stay pending final disposition by this Court on the pending Petition for Writ of Certiorari.

STATEMENT OF THE FACTS

Petitioner's 27-day crime spree included the execution of three convenience store clerks during three separate robberies.[1] The circumstances of are as follows:

Guilt Phase Evidence

On October 13, 1984, petitioner ran out of a pawn shop in Santa Ana, California with a .22-caliber handgun. (RT 4399-4411.) Five days later, he robbed an Arco gas station in Santa Ana and shot the attendant, Horacio Ariza, to death. Ariza had been shot once in the chest and once in the right side of the head at close range. There were no defensive wounds on the victim's body. A car which appeared similar to petitioner's almost struck another car as it sped away from the gas station at approximately 11:30 p.m., just before Ariza was found dead. The robbery netted petitioner somewhere between $137 and $197. (RT 4416-4430, 4446-4448, 4459, 4462-4463, 4466-4468, 4470, 4473, 4490, 4500-4501, 4504.)

Seventeen days later, petitioner robbed a drive-in dairy in the nearby City of Garden Grove at approximately 1:30 p.m. and he shot the clerk, Douglas Metal, to death. Metal was shot in the head behind the left ear, while the gun was against his head.[2] There were no defensive wounds on the victim's body.

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1. The sufficiency of the evidence in support of the judgment of conviction or special circumstance findings are not raised in the instant petition.

2. The neurosurgeon who examined the bodies of the two young men put the two convenience store cases together after examining the small caliber shot to the head on both victims.

The robbery netted petitioner approximately $65. A Perrier bottle at the scene yielded a print matching petitioner. The identification was based on a unique characteristic in part of the print known as the delta. A car similar to petitioner's was seen at the dairy at the time of the murder. (RT 4521-4528, 4532-4544, 4564-4569, 4613-4616, 4621-4623, 4692-4693, 4780, 5022-5024.)

The next day petitioner robbed a Gasco gas station in Santa Ana and shot the attendant, Victor Rea, to death. Rea was found at approximately 11:15 p.m. in the office area with two gun shot wounds to the head just behind the left ear, inflicted while the gun was against his head. There were no defensive wounds on the victim's body. The robbery netted petitioner between $100 and $190. (RT 4789-4796, 4801, 4827-4828, 5040-5042, 5044.)

Two days later, petitioner entered a convenience store in Santa Ana and walked over to the coolers before approaching the register and pointing a gun at the clerk and demanding money. The clerk, who had read about the series of convenience store murders, ran out of the store screaming for help. Petitioner got in his car and the clerk saw the license number of his car and wrote it down. A citizen alerted by the clerk's screams began following petitioner in her car. Petitioner tried to ram her car, and then got out of his car and fired two shots at her. Petitioner drove off and she followed at speeds up to 100 miles an hour until she lost him. She also noted petitioner's license

(RT 4834-4839.)

number. (RT 4840-4847, 4850-4864, 4866, 4879-4885, 4885-4895, 4898-4899, 5008-5016.)

Petitioner, the registered owner of the car, was arrested at his Lake Elsinore home in nearby Riverside County.[3] Petitioner's .22-caliber gun was recovered along with .22-caliber hollow point ammunition inside a shave kit. Two rounds had been expended, and the ammunition inside the gun and the shave kit matched. The projectiles recovered during autopsies of the three victims had been fired from petitioner's gun. (RT 4854, 4900-4918, 4929, 4941-4967, 4970.)

Defense Case

Petitioner initially challenged the fingerprint identification on the Perrier bottle from one of the murder scenes. The defense expert, however, concluded petitioner had made the fingerprint in question. (RT 5448-5454, 5458-5462, 5489-5492, 5502, 5534.) He also produced evidence that the

3. Petitioner was unemployed between August and November of 1984. At the time of his arrest his wallet contained $135 in currency in one part, and $90 in currency in another part. (RT 4924, 5060-5061.)

While petitioner lived in Lake Elsinore, he was staying at the home of his sister in Santa Ana, between November 4, 1984 and November 7, 1984, the dates the drive-in dairy and gas station robbery murders, and the attempted robbery of the convenience store in Santa Ana were committed. He was also away from the home at the times of the crimes. (RT 5047-5053, 5058-5060, 5065-6059, 5107-5109, 5300-5302.) After petitioner returned to his sister's home, following the attempted robbery of the convenience store, he parked his car in back of the house, and looked out the window of the house. He then called another sister, who lived in Lake Elsinore, and asked for a ride. (RT 5139-5144, 5334-5344.) Petitioner's sister told police that he did not want to work in Lake Elsinore, because it was too hot. (RT 5238.)

witness who saw a car similar to petitioner's fleeing the scene of the Arco gas station murder could not positively identify him as the driver. (RT 5575-5579.) Other than asserting an insanity defense, petitioner neither denied his guilt or offered an alibi defense.

Competency Phase

Petitioner made a pretrial motion for a competency hearing pursuant to California Penal Code section 1368 claiming a present inability to cooperate with counsel. At the competency hearing lay witnesses and three psychiatrists and three other experts testified about petitioner's possible paranoid schizophrenia, his violent and aberrant behavior, attempted suicide, and inability to cooperate with counsel. (People v. Medina, supra, 51 Cal.3d 870, 879; Appendix p. 12.) One of the three psychiatrists, who was familiar with petitioner while he was in the Arizona prison system, testified petitioner was a paranoid schizophrenic and incompetent to stand trial. Two other psychiatrists disagreed with the schizophrenia diagnosis, with one leaning toward a finding of competence, and the other opining petitioner was competent to stand trial. Two psychologists also testified; one diagnosed petitioner as schizophrenic, the other doubted the accuracy of a diagnosis of schizophrenia. (Ibid.) Both psychologists opined petitioner was competent to stand trial. The jury found petitioner competent to stand trial.

Sanity Phase

Petitioner testified during the sanity phase, and along with other lay witnesses, recalled his background. He denied any recollection of shooting his victims, but did recall shooting at the woman who chased him from the scene of the attempted robbery. (RT 6121-6127.) Petitioner attempted suicide while in prison in the 1960's and was given anti-psychotic medication. He recalled numerous assaults including once in 1975 when he thought a 75-year old man was reaching for his face so he threw a couple of cups of coffee at him. He moved to Arizona, and used marijuana, hash, and PCP. While living in Arizona, he kidnaped and raped a bar maid and was convicted and sentenced to prison. (RT 6032, 6054, 6060, 6088, 6328.)

While in prison in Arizona, petitioner was sent to a state mental hospital, where he stabbed some people in a kitchen area. After trying to escape from the hospital, he was returned to prison. In prison he was shot by a guard as he tried to climb over a wall in an attempt to attack another inmate. He was also shot at during an escape attempt from prison. He committed other assaults while in prison, including attacking the prison barber. While in prison petitioner received psychotropic medication. (RT 6071, 6073, 6089, 6147, 6173, 6304-6319.)

A psychiatrist, familiar with petitioner through the Arizona prison system, opined that petitioner was a chronic paranoid schizophrenic and was not guilty by reason of insanity. (RT 6350, 6355.) On cross-examination, he conceded he knew

nothing of the facts surrounding petitioner's crimes. (RT 6409-6416.)

A psychologist opined that petitioner has a disorder of schizophrenia of a paranoid type, but the evidence did not show that petitioner was insane at the time of the crimes. (RT 6516-6517, 6520, 6525, 6544, 6558.) A forensic psychiatrist believed petitioner is probably schizophrenic. The evidence, particularly the manner in which the crimes were committed, did show petitioner to be legally sane at the time of the crimes. (RT 6632, 6634, 6704-6716.) He observed that petitioner has a "short fuse", which is not a symptom of schizophrenia. Petitioner had a number of symptoms consistent with a sociopathic type of personality. (RT 6636-6637.) The psychologist also testified that petitioner's lack of recollection of the crimes could not be supported by medical or psychiatric facts. (RT 6651.) He opined the murders were committed either because petitioner did not want to leave witnesses, had a short fuse, or because he is a sociopath who does not care about the lives of others. (RT 6654.)

Another psychiatrist testified that petitioner had no evidence of any kind of mental disturbance which precluded his knowing the nature or quality of his actions and their wrongfulness. He detected evidence of both paranoid schizophrenia and an anti-social personality disorder. He also testified that petitioner was one of the most explosive personalities he had ever met. (RT 6879, 6886-6896, 6904-6906.)

Penalty Phase

The prosecution presented evidence of petitioner robbing and murdering another gas station attendant with the same gun used to kill his three victims in this case, assault on a man in a bar, assault of a prison inmate, and a rape. (RT 7096-7100, 7104-7115, 7120-7124, 7154-7179, 7192-7194.) Additionally, evidence that the murder victim's were passive personalities and unlikely to resist a robbery was introduced. (RT 7219-7329.) Finally, evidence of petitioner's prior convictions for rape, kidnapping, and lewd and lascivious acts committed on July 27, 1977 was introduced. (RT 7329.)

Petitioner relied on mitigating testimony from medical experts on his mental impairment, personality disorder, and low intelligence. Petitioner's father testified about a childhood injury, petitioner's glue sniffing, and unusual behavior. (RT 7228-7229, 7234-7235, 7240-7241, 7258-7260, 7264-7265, 7280-7280.)

Summary of Respondent's Argument

1. A state is only required to prove the elements of a criminal offense. A criminal defendant's competency to stand trial is not an element of the charged offense. Constitutional law affords states great latitude in the proper placement of burdens of proof. Due process concerns arise only when the allocation of that burden subjects defendants to hardship or oppression. The opportunity for knowledge as to the defendant's competency squarely rests with the defendant. While defense counsel can readily attest to the situation with a defendant, the People have little or no access to information regarding the defendant's relationship with his counsel, or defendant's actual comprehension of the nature of the criminal proceedings. Accordingly, California's allocation of the burden of proof and presumption of competency to stand trial does not offend concepts of due process of law.

2. California has a legitimate interest in prosecuting capital cases before a single jury, and in permitting jurors to weigh and consider a defendant's prior criminal conduct in selecting the appropriate penalty, provided that reasonable steps are taken to assure a defendant a fair and impartial penalty. Accordingly, California law permitting introduction of evidence of unadjudicated crimes in the penalty phase of a capital trial does not offend concepts of equal protection and due process and does not deprive a defendant of an inherently reliable death verdict.

ARGUMENT I.

REQUIRING A CRIMINAL DEFENDANT TO PROVE INCOMPETENCY TO STAND TRIAL DOES NOT VIOLATE THE RIGHT OF DUE PROCESS GUARANTEED BY THE FEDERAL CONSTITUTION

Petitioner contends California law violates his right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution by placing the burden of proving incompetency to stand trial on the criminal defendant. (Pet. pp. 7-14.) The California Supreme Court addressed the validity of California's allocation of burden of proof for the first time in petitioner's case. Recognizing the split of authority from other state and federal jurisdictions, the California Supreme Court held the burden of proof upon a criminal defendant embodied in California Penal Code section 1369, subsection (f) passed constitutional muster under both federal and state constitutions. (People v. Medina, supra, 51 Cal. 3d 870, 882-886; Appendix pp. 16, 18.)

California law provides that if "a doubt arises in the mind as to the competence of the defendant" the court shall inquire of defense counsel, and if defense counsel believes his client may be incompetent, the trial court shall order a hearing. (Cal. Pen. Code, § 1368, subd. (a).) Even if defense counsel believes his client to be competent, the trial court has discretion to order a competency hearing. (Cal. Pen. Code § 1368, subd. (b).) Once the trial court has ordered a competency hearing "all proceedings in the criminal prosecution shall be suspended until the question of the present mental competence of

the defendant has been determined." (Cal. Pen. Code § 1368 subd. (c).)

Here, petitioner's counsel made a motion for a competency hearing, thereby compelling suspension of criminal proceedings pending a competency hearing. Under California law it is "presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent." (Cal. Pen. Code § 1369, subsection (f).)

It is well established that the conviction of a criminal defendant while he is legally incompetent violates due process of law. (Pate v. Robinson, 383 U.S. 375, 385, 15 L.Ed.2d 815, 822, 86 S.Ct. 836 (1966).) Moreover, this Court has held that a court's failure to employ procedures to protect against trial of an incompetent defendant violates a defendant's due process right to a fair trial and compels reversal of his conviction. (Id, see Drope v. Missouri, 420 U.S. 162, 171, 43 L.Ed.2d 103, 112-113, 95 S.Ct. 896.) Petitioner contends California's allocation of the burden of proof and presumption of competency violated his federal constitutional right to due process and is contrary to this Court's holdings in Pate and Drope.

Petitioner relies on United States v. DiGilio, 538 F.2d 972, 988 (3rd Cir. 1976) which held it is "contradictory to argue that a defendant who may be incompetent possesses sufficient intelligence that he will be able to adduce evidence of his

incompetency which might otherwise be within his grasp." (Pet. p. 9 citing United States v. DiGilio, supra, 538 F.2d 972, 988, cert. den. 429 U.S. 1038, 50 L.Ed.2d 749, 97 S.Ct. 733; See also, Bilyew v. Franzen, 686 F.2d 1238 (7th Cir. 1982); State v. Jones, 406 N.W. 2d 366, 368-369 (S.D. 1987) [decision based on state constitutional law]; People v. McCallum, 66 Ill.2d 306, 362 N.E.2d 307, 310-311 (1977) [decision based cn state constitutional law].) DiGilio, however, discusses federal procedure, and does not address constitutionality of state statutes which allocate the burden of proof to the defendant.

In Bilyew v. Franzen, supra, the Federal Court of Appeals concurred with a line of Illinois state court decisions which declared a state statute placing the burden of proof of competency on a defendant unconstitutional. The Bilyew court asserted that "There is little question that the Fourteenth Amendment requires the state or federal prosecution to shoulder the burden of proving the defendant is fit to stand trial once the issue of unfitness has been properly raised. [Fn.omitted.] Every court that has considered the issue has so held.[citations omitted]." (Id. at pp. 1244-1245.) The absence of question perceived by the Bilyew court may be attributable to its failure to recognize the contrary authority which exists.

As the California Supreme Court observed, there is "substantial authority" supporting a contrary view. (People v. Medina, supra, 50 Cal. 3d at p. 883; Appendix p. 16.) Indeed, this Court upheld a state statute placing the burden of proof on

a defendant to establish his own insanity, despite the possibility his mental condition might prevent an effective showing. (Leland v. Oregon, 343 U.S. 790, 798-799, 96 L.Ed. 1302, 1308-1309, 72 S.Ct. 1002 (1952; See, Martin v. Ohio, 480 U.S. 228, 236, 94 L.Ed.2d 267, 275-276, 107 S.Ct. 1098 [Ohio statute placing burden of proof on defendant claiming self-defense upheld against due process attack.) In Leland, this Court observed that the state is required to prove only those facts encompassing elements of the crime charged. (Id., at pp. 798-799.) Since Oregon's policy on the allocation of the burden of proof on the issue of sanity did not violate "generally accepted concepts of basic standards of justice" this Court did not interfere with the state's determination of policy. (Id., at p. 799.)

Leland unquestionably remains the law today. (See e.g. Martin v. Ohio, supra, 480 U.S. at p. 236; Patterson v. New York, 432 U.S. 197, 201-205, 53 L.Ed.2d 281, 286-289, 97 S.Ct. 2319 (1977) [following Leland].) Inasmuch as a criminal defendant's competency to stand trial is no more an element of the charged offense, than the question of sanity presented in Leland, California's allocation of the burden of proof necessarily survives a federal due process challenge. (People v. Medina, supra, 51 Cal.3d 870, 884; Appendix p. A17.)

Congress, through legislation, has placed the burden of proof for competency to stand trial with federal prosecutors. (See e.g. 18 U.S.C. 4241.) The federal government's allocation

of the burden of proof in criminal proceedings does not stem from any federal constitutional requirement. As a Fifth Circuit Court of Appeals opinion observed, "We see no reason why Louisiana should be prohibited from placing the burden of proving incompetency on the defendant merely because Congress chose to place that burden on the government in federal prosecutions." (Lowenfield v. Phelps, 817 F.2d 285, 294 (5th Cir. 1987), sub opn. 484 U.S. 231, 98 L.Ed.2d 568, 108 S.Ct. 546 (1988).) The Lowenfield court's departure from the Gigilo/Bilyea line of cases stemmed from the Bilyea court's uncritical adoption of the decision of the Illinois courts. (Ibid.) Relying on the better reasoned and more persuasive federal due process analysis in Lowenfield, the California Supreme Court upheld California's allocation of the burden of proof of competency to stand trial on the defendant. (People v. Medina, supra, 51 Cal.3d 870; Appendix at pp. A-17, A-19.)

Petitioner attempts to distinguish Leland on the grounds it addressed an issue of insanity involving a presently competent defendant. (Pet. 12.) Petitioner argues that California Penal Code section 1369, subsection (f) is "irrational" in presuming competency once a doubt about the defendant's competence has arisen. (Pet. p. 12.) He claims it is inconsistent to treat the defendant in the competency proceeding as if he is incompetent while also presuming he is competent. (Pet. p. 13.) Accordingly, petitioner is contending due process compels that the presumption of competence can only

be a presumption affecting the burden of production of evidence, which abates when "doubt" arises to justify further inquiry into the matter. As the California Supreme Court noted, however, due process does not require the presumption of competence to disappear "merely because a preliminary, often undefined and indefinite, `doubt' has arisen that justifies further inquiry into the matter." (People v. Medina, supra, 51 Cal.3d 870, 885; Appendix p. A-19.)

As Lowenfield recognized, the states have great latitude in the proper placement of proof burdens. (Ibid.) Indeed, due process concerns arise only when the allocation of a burden of proof subjects the defendant to hardship or oppression. (Morrison v. California, 291 U.S. 82, 89, 78 L.Ed. 664, 669-679, 54 S.Ct. 281 (1934).)

In accord with Morrison, the "opportunities for knowledge" as to the defendant's competency squarely rests with the defendant. As the California Supreme Court observed:

> "[O]ne might reasonably expect that the defendant and his counsel would have better access than the People to the facts relevant to the court's competency inquiry. Indeed, this analysis affords a satisfactory answer to Bilyew's (supra, 686 F.2d 1238) concern about the defendant's possible inability to cooperate with his counsel in establishing his incompetence: Counsel can readily attest to any such defect or disability. The People, on the other hand, have little or no access to information regarding the defendant's relationship with his counsel, or defendant's actual comprehension of the nature of the criminal proceedings." (People v. Medina, supra, 51 Cal.3d 870, 885; Appendix p. 18.)

California's presumption of competence and allocation of the burden of proof to the defendant does not violate federal due process standards.

ARGUMENT II.

ADMISSION OF EVIDENCE OF UNADJUDICATED CRIMES IN THE PENALTY PHASE DID NOT VIOLATE PETITIONER'S RIGHT TO DUE PROCESS OR RENDER HIS DEATH SENTENCE UNRELIABLE

Petitioner contends that the admission of unadjudicated crimes in the penalty phase of his trial violated his federal due process and equal protection rights and offends the Eighth Amendment requirement of heightened reliability in death cases. (Pet. pp. 15-19.) To the contrary, California has a legitimate interest in prosecuting capital cases before a single jury, and in permitting jurors to weigh and consider a defendant's prior criminal conduct in selecting the appropriate penalty, provided that reasonable steps are taken to assure a defendant a fair and impartial penalty.

In the penalty phase, evidence was admitted pursuant to California Penal Code section 190.3, factor (b) of four unadjudicated crimes. Specifically, evidence of petitioner robbing and murdering another gas station attendant, three other separate incidents involving two assaults and a rape was admitted into evidence in the penalty phase.

Petitioner contends his federal constitutional rights were violated since a separate jury did not adjudicate the criminal acts prior to those acts being considered in the penalty phase. The California Supreme Court has repeatedly rejected petitioner's argument. (People v. Medina, supra, 51 Cal.3d 870, 906; Appendix p. A-40.) As the California Supreme Court

observed, this Court has never suggested unadjudicated penalty evidence must be heard by a separate jury. (People v. Balderas, 41 Cal.3d 144, 204-205, 222 Cal.Rptr. 184, 711 P.2d 480 (1985).)

This Court has recognized that states should enjoy broad discretion in deciding which negative aspects of the defendant's character and background are relevant to sentencing considerations. (See, Estelle v. Smith, 451 U.S. 454, 472-473, 68 L.Ed.2d. 359, 101 S.Ct. 1866 (1981); Jurek v. Texas, 428 U.S. 262, 276, 49 L.Ed.2d. 929, 96 S.Ct. 2950 (1976).) Indeed, this Court has approved capital punishment statutes which contemplated the consideration of other crimes evidence in connection with penalty. (Gregg v. Georgia, 428 U.S. 153, 165-166, fn. 9, 49 L.Ed.2d. 859, 96 S.Ct. 2909 (1976); Proffit v. Florida, 428 U.S. 242, 248-249, fn. 6, 49 L.Ed.2d. 913, 96 S.Ct. 2960 (1976).)

California law affords basic procedural protections to capital defendants in the use of unadjudicated crimes in the penalty phase determination. First, evidence of unadjudicated crimes is limited to crimes involving the use or threat to use violence. (People v. Gates, 43 Cal.3d 1168, 1202, 240 Cal.Rptr. 666, 743 P.2d. 301 (1987).) Additionally, the reliability requirement of the Eighth Amendment is satisfied by the California rule of law that uncharged violent acts must be proved beyond a reasonable doubt. (People v. Robertson, 33 Cal.3d 21, 53-55, 188 Cal.Rptr. 77, 655 P.2d. 279 (1982).) Accordingly, petitioner has not been denied his federal constitutional rights

based on admission of unadjudicated violent acts in the penalty phase.

California law does not decrease the reliability of the determination that death is appropriate. To the contrary, admission of uncharged violent criminal activity adds to the reliability of the determination by ensuring receipt of a complete and accurate picture of petitioner's character and background. The use of unadjudicated acts within the strict limitations imposed by California courts does not violate petitioner's constitutional rights.

CONCLUSION

Petitioner's challenge to placing the burden of proof of competency to stand trial on the defendant is unpersuasive. California's legitimate policy interest in allocating the burden of proof to the party with access to the relevant information does not offend concepts of due process.

Petitioner's challenge to the admission of evidence of unadjudicated criminal conduct in the penalty phase of a capital trial is devoid of merit. California has a legitimate interest in litigating a capital case before a single jury, and in permitting consideration of a capital defendant's prior criminal conduct in selecting the appropriate penalty. California's law protects that legitimate interest, without offending concepts of due process and equal protection, while affording a reliable death verdict, as reasonable steps are taken to assure defendants a fair and impartial penalty trial.

Given the substantively weak issues presented by petitioner, respondent respectfully requests the instant Petition for Writ of Certiorari be denied.

Dated: July 15, 1991.

Respectfully submitted,

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No: 90-8370
October Term, 1990

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Attorney General of
the State of California
HOLLY D. WILKENS
Deputy Attorney General
110 West A Street, Suite 700
San Diego, California 92101

TEOFILO MEDINA, JR.,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

I, THE UNDERSIGNED, say: I am a citizen of the United States, am 18 years of age or over, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 700, San Diego, California 92101.

I have served the within OPPOSITION TO PETITION FOR WRIT OF CERTIORARI as follows: To William K. Suter, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and nine (9) copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing one copy in a separate envelope addressed for and to each addressee named as follows:

Fern M. Laethem
State Public Defender
Sarah Plotkin
Chief Assistant State Public Defender
Michael Pescetta
Counsel of Record
221 Main St., 10th Floor
San Francisco, CA 94105
(Attorneys for Petitioner)

Michael Capizzi
District Attorney
Orange County
700 Civic Center Dr. W.
Santa Ana, CA 92501

California Supreme Court
303 Second Street, South Tower, 8th Floor
San Francisco, CA 94107

GARY L. GRANVILLE, Clerk
Orange County Superior Court
700 Civic Center Dr. W.
Santa Ana, CA 92701

Each envelope was then sealed and with the postage prepaid deposited in the United States mail by me at San Diego, California, on the 16th day of July, 1991.

There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, July 16, 1991.

Regina C. Kamholz
REGINA C. KAMHOLZ

Subscribed and sworn to before me
this 16th day of July, 1991.

Anne Marie Bryant
Notary Public in and for said County and State

BEST AVAILABLE COPY